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IN THE

Supreme Court of the United States

OCTOBER TERM, 1957

No. 47d

CHARLES STEVENSON, HEYWARD BURRELL, FRANK HARLEY, *Petitioners*

v.

RICHARD REED, ARTHUR PAGE, DANIEL TYLER, ET AL., TRUSTEES

and

FIRST BAPTIST CHURCH OF MARSHALL HEIGHTS, INC., *Respondents*

BRIEF FOR THE RESPONDENTS IN OPPOSITION TO THE GRANTING OF THE PETITION FOR A WRIT OF CERTIORARI

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OPINION BELOW

The opinion of the Court of Appeals has not, yet been officially reported.

JURISDICTION

The judgment of the Court of Appeals was issued on the 20th day of June, 1957. The jurisdiction of this Court is invoked pursuant to the provisions of 28 U. S. C. 1254(1).

QUESTIONS PRESENTED

1. Whether the United States Court of Appeals per curiam decision affirming an order of the United States District Court for the District of Columbia, vacating a default judgment against respondents entered at a pre-trial hearing, without notice to respondents and without hearing or evidence, after respondents had appeared and filed an answer denying petitioners' allegations of ownership of church property and asserted ownership in the respondent church, is in conflict with the decision of this Court in the case of *Klappott* v. *U. S.*, 335 U. S. 601, and as modified in 336 U. S. 942.

2. Whether the order of the District Court, vacating the default judgment and affirmed by the United States Court of Appeals, conflicts with the decision in the case of *U.S.* v. *Karahalias,* 2nd Cir. (1953), 205 F. 2d 331, 334.

3. Whether the District Court was authorized upon consideration of Rule 16, Rule 55(b)(2) and (c), Federal Rules of Civil Procedure and Rule 60(b), (6), Federal Rules of Civil Procedure to set aside and vacate the default judgment.

4. Whether the petitioners are acting in good faith or are they acting for the mere purpose of delay and to prevent the respondents from having the issues raised by the pleadings settled and a judgment determining the ownership of the property entered by the District Court.

STATUTES AND RULES INVOLVED

The Rules of Federal Civil Procedure are found in 28 U.S.C.A., the pertinent Rules of Federal Civil Procedure and local Rules of the United States District Court for the District of Columbia are set out as follows:

Federal Rules of Civil Procedure:

Rule 5
Rule 15(a)
Rule 55(b), (c)
Rule 60(b)
Rule 77(d)

District Court Rules:

Rule 12(b)
Rule 14(i)

Section 57, Judicial Code, U.S.C.
Title 28, Sec. 118

STATEMENT OF THE CASE

The individual respondents are members and trustees of the respondent, First Marshall Heights Baptist Church also known as the First Baptist Church of Marshall Heights, a corporation, and the First Baptist Church of Washington, D. C.

The respondent church was organized by a group of members of the Negro race on August 18, 1938, who by by their joint contributions and the contributions of other persons of the community raised the necessary funds to purchase Lots 14 and 16 in Square 5334 in the District of Columbia and to build the church. The church authorized the petitioners, as its trustees, to purchase the lots in its name, "First Marshall Heights Baptist Church". The petitioners, without knowledge

of the member or the church, took title to the property in their names as trustees of the First Baptist Church of Washington, D. C. The petitioners remained as officers and members of the church until they were removed from office and excommunicated by the church for conduct unbecoming Christians on, to wit, the 8th day of October, 1951. Petitioners thereafter filed a complaint against these respondents in the United States District Court for the District of Columbia, on the 15th day of October, 1951, Civil Action No. 4291-51, alleging that they had been put out of the church wrongfully and as a result of a conspiracy by the respondents and prayed that the Court compel the church to restore them to its membership. The relief was denied and the complaint dismissed.

Thereafter the petitioners filed several other suits against the respondents, which were decided in favor of the respondents. The instant action was commenced in the United States District Court for the District of Columbia on the 2nd of May, 1953, by the petitioners. The complaint is a repetition of the allegations contained in Civil Action No. 4291-51, United States District Court of the District of Columbia, and in Civil Action No. M19030-53, Municipal Court for the District of Columbia, except that in the instant case petitioners allege a fee simple ownership in themselves, individually. The respondents in their answer deny all of the material allegations of the complaint and assert title in the respondent church.

The petitioners claim that they, Charles Stevenson, Heyward Burrell and Frank Harley, are the record title holders. Two (2) deeds, on record in the Office of the Recorder of Deeds for the District of Columbia, show that the property which is the subject of this

litigation, Lots 14 and 16, in Square 5334, was conveyed to *Charley Stevenson* and *Heyward Burrell, Trustees for the First Baptist Church, Washington, D. C.*

After the case was at issue, it was called for pre-trial. No notice of the pre-trial was given or received by counsel for defendants, two (2) to nine (9) inclusive. Notices apparently went to petitioners, as plaintiffs, and to counsel for defendant number one (1), the American Security and Trust Company, a corporation. On October 28, 1954, at pre-trial, because of the absence of counsel for respondents, the pre-trial Judge directed a default judgment against the respondents. No notice of the entry of this judgment was given to respondents or their counsel. No hearing was had and no evidence was taken by the Court. On November 2, 1954, without notice to respondents, either by the Clerk of the Court, or counsel for the petitioners, the pre-trial Judge entered a default judgment against the respondents, without a hearing, or evidence and without deciding the issues raised by the pleadings. The default judgment merely stated that,

> "Upon consideration of the pleadings and the failure of Defendants two through ten inclusive, to appear, it is hereby the Court this 2nd day of November 1954,
>
> ORDERED, DECREED AND ADJUDGED, That plaintiffs are given judgment by default against defendants two through ten inclusive. It is further ORDERED that the complaint against the American Security & Trust Company is dismissed with prejudice".

On November 6, 1955, one year and four days after the default judgment had been entered, respondents were served by the U. S. Marshal with a Writ of

Assistance, which had been issued November 5, 1955. This was their first knowledge of the default judgment. On November 7, 1955, respondents filed a Motion in the District Court to vacate the default judgment or in the alternative to stay the Writ of Assistance. On November 9, 1955, the District Court, after extensive argument by counsel, vacated the Writ of Assistance and stated in its order that respondents are entitled to a hearing of the case on its merits. No action was taken by the Court on the Motion to vacate the default judgment. The petitioners appealed from the order vacating the Writ of Assistance and the U. S. Court of Appeals for the District of Columbia affirmed the action of the District Court. This decision is reported in 98 U. S. App. D. C., 262, 235 Fed. 2d 21.

The default judgment is fatally defective and completely indecisive of the rights of the parties hereto. On the 28th day of September 1956, petitioners filed a complaint for a Declaratory Judgment in the District Court, Civil Action No. 3965-56, to construe the default judgment. This complaint was dismissed on February 11, 1957.

On the 18th day of October 1956, the respondents filed an amendment to its Motion designated as an Amended Motion to Vacate the Default Judgment. Thereafter on the 28th day of November, 1956, hearing was had on the Motion and Amended Motion to Vacate the Default Judgment and on December 6, 1956, the Court granted respondents' Motion to Vacate the Default Judgment. The action of the District Court vacating the default judgment was affirmed on appeal in a per curiam decision by the U. S. Court of Appeals for the District of Columbia on June 20, 1957, because of which petitioners ask for Writ of Certiorari.

REASONS FOR OPPOSING THE WRIT

I

A—The decision of the District Court, affirmed by the Court of Appeals for the District of Columbia, is not in conflict with the decision of this Court in the case of *Klappott* v. *United States*, 335 U. S. 601, as modified 336 U. S. 942.

The *Klappott* case presented questions concerning the power of Federal District Courts to enter default judgments depriving naturalized persons of their citizenship without hearing or evidence, and to set aside such default judgments under circumstances, where justice would be served, four or more years after default was entered. Klappott's petition to vacate the default, filed four years after default was entered stated that he was falsely and unlawfully detained in jail at the time he was notified of the date of hearing and on the date the judgment by default was entered, cancelling his Certificate of Naturalization. He also alleged other obstacles imposed upon him by the Government which prevented him from answering the denaturalization proceedings and from acting on the default judgment until four years thereafter.

The decision of this Court upheld the principle of his right to a hearing before judgment as well as the power of the District Courts to vacate a default judgment under Rule 60(b), (6) of the Federal Rules of Civil Procedure. This Court reversed the District Court and Circuit Court and remanded the case. Upon rehearing to modify it reversed its former decision, remanded the case to the District Court and required Klappott to prove the allegations of his petition to

set aside the default judgment, before the Court should set aside the default judgment. The decision makes it crystal clear why in denaturalization proceedings it established the procedural process laid down in the *Klappott* case. The Court in construing Rule 60(b), (6) held that Klappott was entitled to relief, under the "any other reason" clause, if he established the truth of the allegations of his petition, and that his inaction was not "excusable neglect". The factual situation in the instant case is entirely different from that in the *Klappott* case in its every aspect. In the instant case, the defendants had filed an answer which denied the allegations of the complaint as to the petitioners' ownership of the church property and asserted ownership in the church.

B—The decision of the lower Courts in this case is not in conflict with the case of *Karahalias* v. *United States,* 2 Cir., 205 F. 2d 231. The *Karahalias* case is also one dealing with denaturalization. Karahalias appealed from an order of the District Court denying his Motion to reopen the judgment entered against him by default, cancelling his Certificate of Naturalization. The trial Judge denied his Motion because of his inaction for more than seventeen years and indicated the lack of any reason justifying relief from the operation of the cancellation decree. Action was brought to cancel his Certificate of Naturalization and service was had upon him in the year 1934, and because of his non-appearance a default judgment was entered against him. He filed a Motion to reopen the judgment and alleged in the supporting affidavit that he was unavoidably forced to remain in Greece, his native Country, and did not learn of the entry of the default judgment until the year 1947. He did not deny re-

ceiving copies of the petition and summons. The Second Circuit Court of Appeals followed the decision of this Court in the *Klappott* case, and held that his inaction was not excusable neglect and that he was not subject to the one year limitation of Rule 60(b) but his case fell within subsection (6) of Rule 60(b), Federal Rules of Civil Procedure.

The District Court and the Circuit Court in the instant case recognized and followed the construction placed upon Rule 60(b), (6) by the *Klappott* case and the *Karahalias* case.

C—There is no conflict in the instant case and the decision in the case of *Massa* v. *Jiffy*, 9 Cir., 240 F. 2d 702. This was a suit for unfair competition in the use of a trade mark and for infringement of trade mark. Defendant counter-claimed for declaration of invalidity of the patent, and order of rectification of registration of trademark in favor of defendant. The owner of the patent, which he had not assigned, was made a third-party defendant and a cross complaint was filed against him. Upon third-party's refusal to answer certain interrogatories, the United States District Court for the Southern District of California, Central Division, after hearing, entered default judgment finding patent invalid and that defendant was entitled to registration of the trade mark on proper application. The third-party defendant appealed. The Ninth Circuit Court sustained the District Court and held that the registered owner of an assigned patent and trade mark was properly made a party to the suit and that there was no abuse of discretion by the trial court in entering the default judgment without further proof. On appeal Massa also contended that; (1) he was improperly joined as a third-party defendant, (2) that

the cross complaint for a declaration of invalidity of patent does not state a justiciable controversy, and, (3) that a judgment holding a patent invalid cannot be entered by default without "additional evidence" being taken pursuant to Rule 55(b) of the Federal Rules of Civil Procedure. Massa's deposition had been taken, a hearing was had and findings of fact were made by the District Court.

D—There is no conflict in the Fifth Circuit case of *Bass v. Hoagland*, 172 F. 2d 205, in which certiorari to this Court was denied, 338 U. S. 816. This case is practically on all fours with the instant case. Bass had filed an answer, as in the instant case. No notice of application for default was submitted, in support of the judgment, as in this case. Default was recited in the judgment as its basis when there was no default, but an answer on the merits had been filed as in this case.

Bass, a citizen of Texas, was sued in Kansas by a citizen of Kansas for personal injury resulting from an automobile accident. Plaintiff filed demand for jury trial and Bass never consented to withdrawal of the jury demand. Defense counsel withdrew but did not withdraw the appearance and answer. The judgment indicated that notice of the withdrawal was given defendants, but Bass alleged that he did not know of it. The case came on for trial with neither plaintiff nor defendants present. The trial Judge considered the case in default by reason of previous withdrawal of defendant's counsel. The judgment was not filed until three months later, and no notice was given three days before asking a judgment by default as required by Rule 55(b), Federal Rules of Civil Procedure.

In this case the Court stated that, "when Bass by his attorney filed a denial of plaintiff's case, neither the Clerk nor the Judge could enter a default against him. The burden of proof was put upon the plaintiff in any trial. When Bass nor his attorney appeared at the trial, no default was generated, the case was not confessed. The plaintiff might proceed, but he would have to prove his case. If there was an erroneous idea that absence of counsel caused a default, still Rule 55(b), (2) required that three days notice be given to Bass or his counsel before judgment could be considered", and * * * "To get such judgment without notice is not in our opinion due process of law", said the Court citing *Hovey* v. *Elliot,* 167 U. S. 407, where this Court upheld the right of a three day notice before entry of default judgment.

II

A—This is not a case invoking principles the settlement of which is of importance to the public as distinguished from that of the parties, nor is there a real and embarrassing conflict of opinion and authority between or among the circuits.

The petition for the writ of certiorari completely fails to present a case which calls for the issuance of the writ.

Petitioners urge that the case should be remanded and the respondents required to prove that no notice of pre-trial was received by them or their counsel. They concede that no notice was given as required by Rule 55(b), (2) and 77(d) of the Federal Rules of Civil Procedure. It must be conceded, from the affidavit of the Assignment Commissioner of the District

Court, that *he* did not mail a notice of the pre-trial to respondents nor their counsel. No circuit court has extended the procedural requirement of the *Klappott* case to any other than denaturalization cases and it is obvious that this Court had no intention to do so.

B—The petitioners rest their application upon three grounds:

First, they contend the District Court should have accepted the affidavit of the Assignment Commissioner that a notice of pre-trial was sent to counsel for respondents.

Second, that the failure of counsel to appear at pre-trial on October 28, 1954 constituted a justifiable reason for a default judgment, and

Third, that although the respondents were given no notice of the application for default judgment as required by Rule 55(b), (2), which was entered November 2, 1954 and no notice of the entry of the order as required by Rule 77(d), the Court is without jurisdiction to relieve the respondents from the default judgment under Rule 55(c) and Rule 60(b), (4) or (b), (6), Federal Rules of Civil Procedure.

The position of the petitioners is contrary to the decision, equity, philosophy and construction of the Rules in each of the cases upon which they base their petition for a Writ of Certiorari.

The default judgment fails to settle the issues raised by the pleadings. It makes no finding of fact as to the ownership of the property, which is the subject of this litigation. It is vague, indefinite, unenforceable and void. The District Court properly vacated the default

judgment and the Circuit Court of Appeals properly affirmed its decision.

The record in this case and the statement of facts, in the opinion of counsel for the respondents, clearly and strongly indicate a lack of good faith on the part of the petitioners and a persistent intent on their part to delay the final determination of the issues herein raised.

CONCLUSION

It is respectfully submitted that the jurisdictional limitation under Rule 60(b) of the Federal Rules of Civil Procedure has been settled by this Court, followed by the Circuit Courts and adhered to in this case by the District and the Circuit Court of Appeals and that the petition for the writ of certiorari should be denied, and further that petitioners are not acting in good faith, but to delay the final hearing of this case on its merits.

Respectfully submitted,

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